

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
CLARKS FORK YELLOWSTONE RIVER (BASIN 43D)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANTS: Jeanette Reinhart; Paul J. Reiter

**43D-0512-R-2021**  
43D 20229-00  
43D 24117-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Clerk of the Montana Water Court.  
Please review this report carefully. You may file a written objection to the Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations.

The above stamped date indicates the date the Master's Report was filed and mailed. Rule 23 of the Water Right Adjudication Rules requires written objections to the Master's Report must be filed within 10 days of the date of the Master's Report. Because the Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. This means your objection must be received no later than **13 days** from the above stamped date.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the Service List must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## **MASTER'S REPORT**

### **Statement of the case**

Irrigation claims 43D 20229-00 and 43D 24117-00 appeared in the Preliminary Decree with issue remarks. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim.

Both claims received issue remarks concerning maximum acres irrigated, flow rate, overlapping places of use, and an overfiled notice of appropriation.

Montana law requires the Water Court to resolve issue remarks. Claimants completed the issue remark resolution process.

### **Issues**

1. What are the historically accurate maximum acres irrigated, place of use, and flow rate for each claim?
2. Are the issue remarks resolved?

### **Findings of fact**

1. The Preliminary Decree abstract for claim 43D 20229-00 identified a 133.30-acre place of use and a 4.00 CFS flow rate.

2. The Preliminary Decree abstract for claim 43D 24117-00 identified a 40.00-acre place of use and a 1.52 CFS flow rate.

3. The same notice of appropriation filed by Samuel Hendrickson for 4.00 CFS of Cottonwood Creek was filed in support of each statement of claim. The notice of appropriation was overfiled by 1.52 CFS.

4. On July 27, 2021, the DNRC filed a Memorandum concerning claimants'

attempt at resolution of the issue remarks. Included with the DNRC Memorandum were a Verified Motion to Amend Water Right Claim 43D 20229-00 from Jeanette Reinhart, a Verified Motion to Amend Water Right Claim 43D 24117-00 from Paul J. Reiter, and several aerial photos.

5. The DNRC reported claimants' proposed modifications resolved the maximum acres irrigated, flow rate, overlapping places of use, and overfiled notice of appropriation issue remarks on each irrigation claim.

6. Claim 43D 20229-00 historically irrigated a 65.50-acre place of use with a 2.93 CFS flow rate.

7. Claim 43D 24117-00 historically irrigated a 24.00-acre place of use with a 1.07 CFS flow rate.

## **Principles of law**

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. Prima facie proof may be overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a "modest standard" and is evidence that demonstrates the fact to be proved is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. Settlement, including the documents filed by a claimant where the claimant is the only party, is subject to review and approval by the Water Court. Rule 17(a), W.R.Adj.R.

4. The Montana Water Court may accept a settlement agreement that reduces or limits an element of a claim and need not determine whether the burden of proof is met

unless there is an unresolved issue remark on the claim. Rule 17(c), W.R.Adj.R.

5. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

6. If the Montana Water Court cannot resolve issue remarks based upon information in the claim file or information available to the Court, claimants shall be required to confer with the DNRC to attempt resolution of the issue remarks. Claimants shall file documentation to resolve the issue remarks, and the DNRC shall submit recommendations regarding disposition of the issue remarks. Section 85-2-248(5), MCA.

## **Analysis**

### **Issues 1 and 2 – maximum acres irrigated, place of use, and flow rate; issue remark resolution**

The DNRC reviewed 1962, 1980, and 2015 aerial photos and visited with Jeanette Reinhart and Paul J. Reiter. Both claimants proposed reductions to maximum acres irrigated and place of use for their claims in agreement with the maximum acres irrigated and place of use confirmed by DNRC on the aerial photos. Claimants also proposed reducing the flow rate for their respective claims. The DNRC recommended removal of the issue remarks based upon claimants' proposed reductions to maximum acres irrigated, place of use, and flow rate.

Claimants' Verified Motions included aerial photos depicting the reduced maximum acres irrigated and place of use for each claim. Copies of the aerial photos are included with this report. Both the report and the aerial photos will be placed in the claim files for future reference.

## **Conclusions of law**

There is no burden of proof for claimants to meet. The evidence entered into the record results in reductions within the parameters of statements of claim 43D 20229-00 and 43D 24117-00, justifies the modifications to the claims, and resolves the maximum

acres irrigated, flow rate, overlapping places of use, and overfiled notice of appropriation issue remarks on the claims.

## Recommendations

Irrigation claim 43D 20229-00 should be modified as follows to accurately reflect historical use.

**FLOW RATE:**                      ~~4.00 CFS~~                      **2.93 CFS**

**MAXIMUM ACRES:**                      ~~133.30~~                      **65.50**

**PLACE OF USE:**

	<u>ACRES</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	<del>51.83</del> <del>84.30</del>		<del>E2SE</del>	<del>31</del>	<del>4S</del>	<del>21E</del>	<del>CARBON</del>
	<del>13.67</del> <del>49.00</del>		<del>SWSW</del>	<del>32</del>	<del>4S</del>	<del>21E</del>	<del>CARBON</del>
TOTAL:	<b>65.50</b> <del>133.30</del>						

Irrigation claim 43D 24117-00 should be modified as follows to accurately reflect historical use.

**FLOW RATE:**                      ~~1.52 CFS~~                      **1.07 CFS**

**MAXIMUM ACRES:**                      ~~40.00~~                      **24.00**

**PLACE OF USE:**

	<u>ACRES</u>	<u>GOVT LOT</u>	<u>QTR SEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
	<del>21.96</del> <del>40.00</del>		<del>N2SW</del>	<del>32</del>	<del>4S</del>	<del>21E</del>	<del>CARBON</del>
	<del>2.04</del> <del>—</del>		<del>NWSESW</del>	<del>32</del>	<del>4S</del>	<del>21E</del>	<del>CARBON</del>
TOTAL:	<b>24.00</b> <del>40.00</del>						

The issue remarks should be removed from the claim abstracts.

Post Decree Abstracts of Water Right Claim accompany this report to confirm implementation of the recommendations in the state's centralized water right record system.

---

Anna M. Stradley  
Senior Water Master

**Service via USPS Mail**

Jeanette Reinhart  
583 Cooney Dam Road  
Roberts, MT 59070-9503

Paul J Reiter  
PO Box 5506  
Carmel, CA 93921

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
CLARKS FORK YELLOWSTONE RIVER  
BASIN 43D**

**Water Right Number:** 43D 20229-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** JEANETTE REINHART  
583 COONEY DAM ROAD  
ROBERTS, MT 59070 9503

**Priority Date:** APRIL 16, 1904

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION

**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 2.93 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT  
PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 2 - MODERATELY HIGH

**Maximum Acres:** 65.50

**Source Name:** COTTONWOOD CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESE	12	5S	20E	CARBON

**Period of Diversion:** MAY 1 TO NOVEMBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** HENDRICKSON DITCH

PUMP IS SECONDARY MEANS OF DIVERSION.

**Period of Use:** MAY 1 TO NOVEMBER 1

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	51.83		E2SE	31	4S	21E	CARBON
2	13.67		SWSW	32	4S	21E	CARBON
<b>Total:</b>	65.50						

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
CLARKS FORK YELLOWSTONE RIVER  
BASIN 43D**

**Water Right Number:** 43D 24117-00 STATEMENT OF CLAIM  
**Version:** 3 -- POST DECREE  
**Status:** ACTIVE

**Owners:** PAUL J REITER  
PO BOX 5506  
CARMEL, CA 93921

**Priority Date:** APRIL 16, 1904

**Type of Historical Right:** FILED

**Purpose (Use):** IRRIGATION  
**Irrigation Type:** SPRINKLER/FLOOD

**Flow Rate:** 1.07 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT  
PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 2 - MODERATELY HIGH

**Maximum Acres:** 24.00

**Source Name:** COTTONWOOD CREEK  
**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESE	12	5S	20E	CARBON

**Period of Diversion:** APRIL 1 TO NOVEMBER 30

**Diversion Means:** HEADGATE

**Ditch Name:** HENDRICKSON DITCH

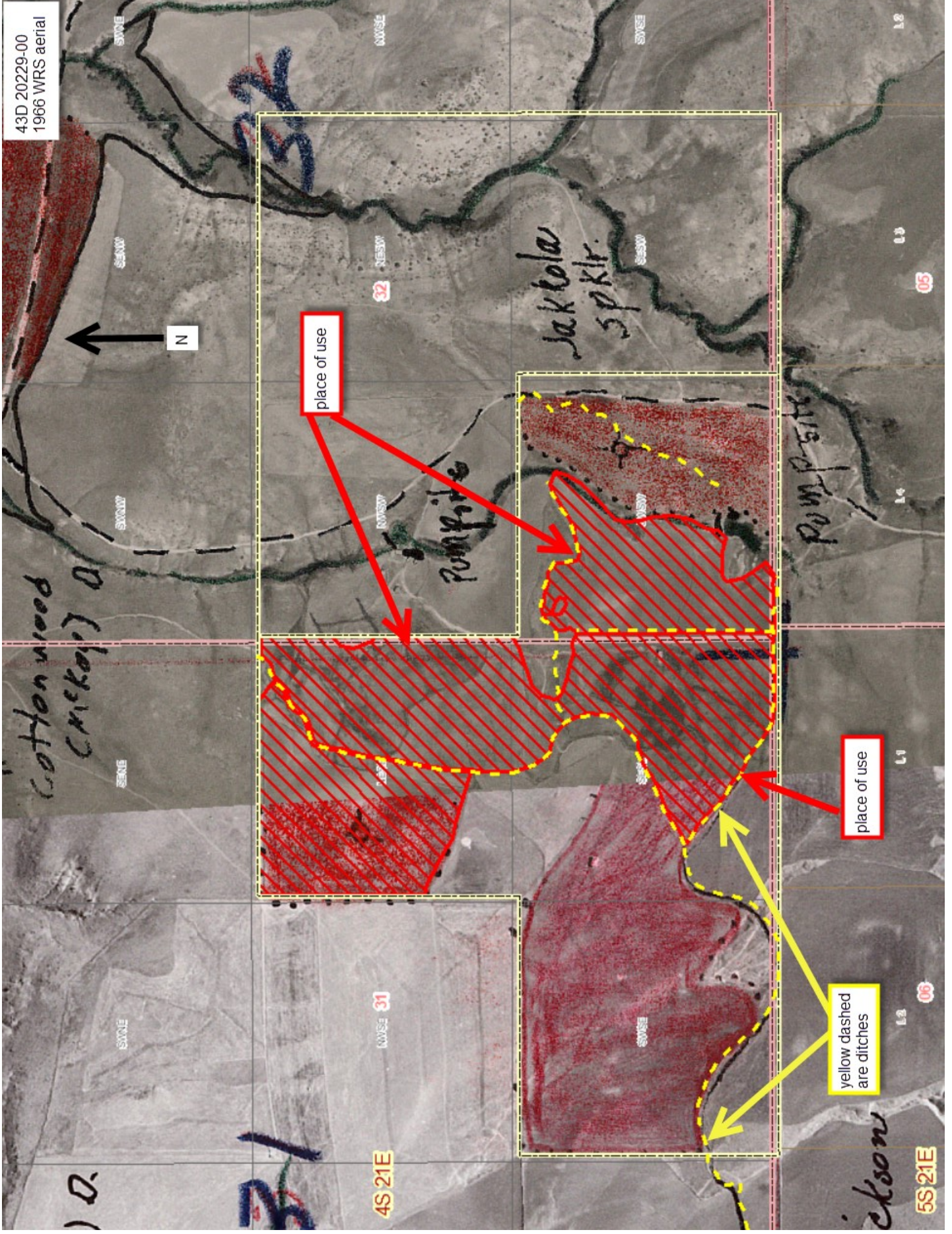
**Period of Use:** APRIL 1 TO NOVEMBER 30

**Place of Use:**

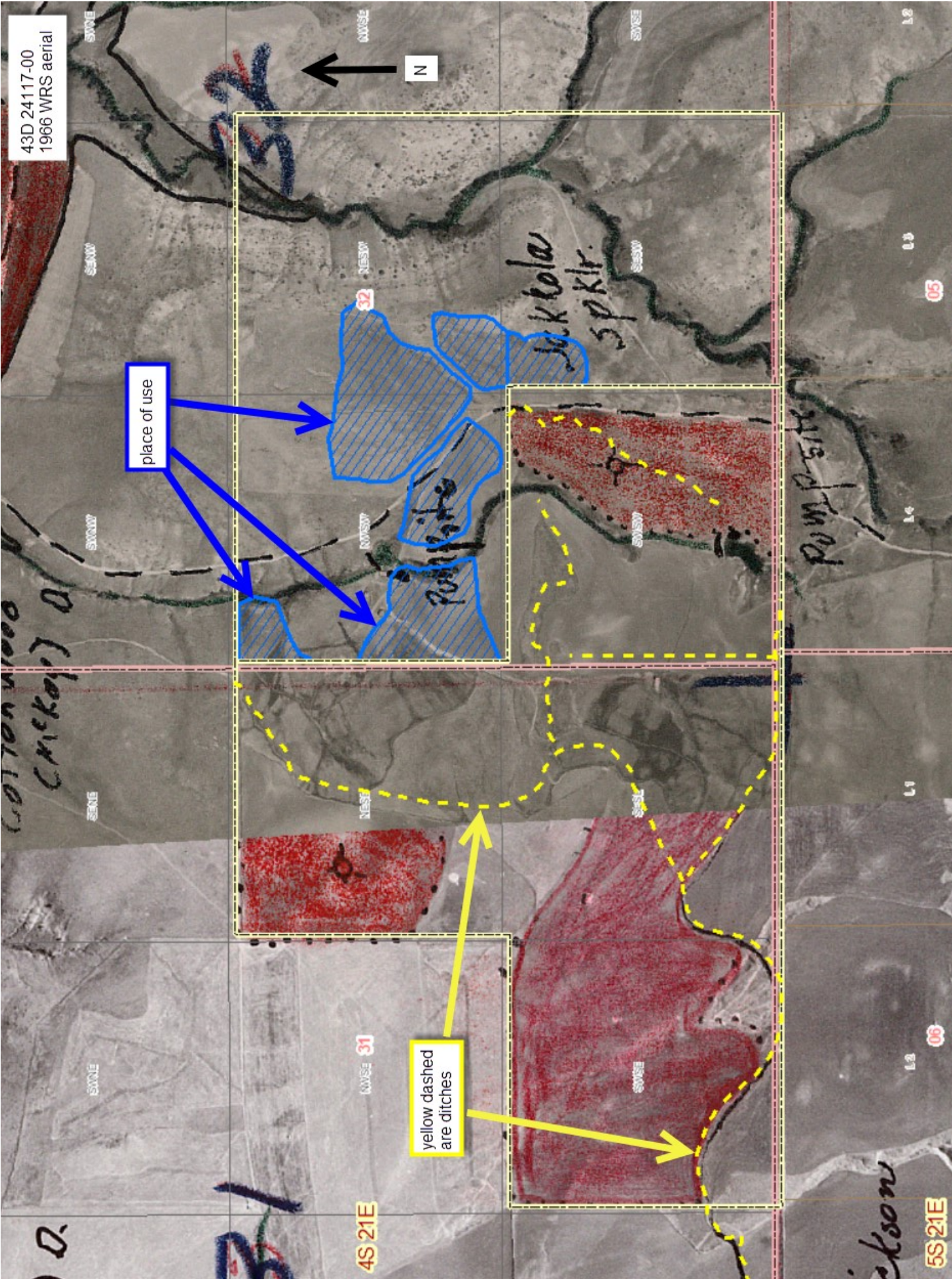
<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	21.96		N2SW	32	4S	21E	CARBON
2	2.04		NWSESW	32	4S	21E	CARBON
<b>Total:</b>	24.00						



43D 20229-00  
1966 WRS aerial







43D 24117-00  
1966 WRS aerial

place of use

yellow dashed  
are ditches

Cottonwood  
(chickap) a

Jokkola  
spkr.

Pottsville

Pump site

Jackson

31

4S 21E

32

05

06

5S 21E



